

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

### CHAPTER 300 - Resources

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#### **304.01.05E APPLYING THE TRANSFER PENALTY**

Denial of coverage or services because assets were transferred for less than Fair Market Value is known as a transfer penalty. Under the DRA, transfer penalties are applied differently to institutionalized individuals and those applying for, or receiving, Home and Community Based Services.

The penalty period for an institutionalized applicant begins when the individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty. If the individual is otherwise eligible for Medicaid, he/she may receive Medicaid for all services except:

- Nursing facility services;
- Nursing facility services provided in an institution that is equivalent to that of nursing facility services;
- Home and Community Based Waiver Services

An application for Home and Community Based Services (HCBS) cannot trigger the start of a transfer penalty period. As indicated, a penalty can only start when an individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty. The transfer penalty does not allow an individual to enter into an HCBS waiver program; therefore, the start date for the penalty cannot be triggered and the individual remains ineligible as long as the transfer is within the 5-year lookback period.

If an individual or his/her spouse has a penalty as the result of a transfer, use the following guidelines to handle the imposition of the penalty:

- Nursing Home Assistance
  - Vendor payment (room and board) is denied or terminated for the duration of the penalty period;
  - Medicaid is approved for all other services.

#### Home and Community Based Services

- If Medicaid eligibility is dependent on participating in the waiver, the application is denied or the case is closed until the transfer is outside the 5-year look back period;
- Can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

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### Examples

1. Jill entered a nursing home on January 10, 2008. She applied for nursing home Medicaid on August 12, 2008. During the interview, a \$50,000.00 transfer of assets on January 5, 2006 was discovered. This transfer took place within the 5 year look back period; however, it was prior to DRA. The transfer penalty will begin the month of the transfer which January 2006. The penalty period will be determined by dividing \$50,000.00 by \$3,100.00. The penalty period is 16 months. The penalty expired prior to Jill asking for Medicaid coverage.

**HCBS-** Pre-DRA, the same rules for calculating the penalty for nursing homes were used for waivers. So, in this case, waiver eligibility can be considered. If this transfer had occurred after February 8, 2006, Jill would have to wait a full 5 years before waiver eligibility could be considered or the transferred assets could be returned to Jill.

2. Tom transferred his home to his brother in September 2007. The home was valued at \$78,200.00. This transfer occurred within the 5 year look back period but after the effective date of DRA. Tom has asked for nursing home Medicaid beginning September 2008.

The penalty will begin the month that services are requested if eligible on all other criteria. The penalty period will be calculated by dividing \$78,200.00 by \$4,600.00. The penalty period will be 17 months. Tom can be approved for LTC Medicaid with a stop payment to the nursing home for 17 months.. If the brother returns the home property to Tom, the transfer penalty can be erased.

**HCBS—**Since this transfer occurred after DRA, Tom cannot be eligible for waiver services until the transfer is outside the 5 year look-back period, unless the property is returned.